

Anthony D. Cortese, Sc.D.
Commissioner

Hazardous Waste Update

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JANUARY * 1983 * JANUARY * 1983 * JANUARY * 1983 * JANUARY * 1983 * JANUARY * 1983 * JAN

This issue of the Update: reviews the status of the Division's enforcement and abandoned/uncontrolled hazardous waste site activities; summarizes the evaluation of the Community Hazardous Waste Coordinator Program; reports on proposed hazardous waste legislation; and provides notice on three regulatory developments.

ENFORCEMENT AND CLEAN-UP ACTIVITIES

On December 20, 1983, the Environmental Protection Agency added eight Massachusetts sites to the federal Superfund list. The Commonwealth now has 14 hazardous waste sites on the Superfund list. Each site would be eligible for clean-up funds under the \$1.6 billion five-year federal Comprehensive Environmental Response, Compensation and Liability Act passed by Congress in 1980. Last fall, DEQE requested that EPA add 15 sites to the Superfund list. The candidates were ranked against other sites nationwide for potential air, surface and ground water contamination. Those that did not score high enough for nomination included sites in Billerica, Framingham, Haverhill, Holden, Lanesboro, Lowell, Norton and Provincetown. The Department will continue to pursue enforcement and investigation actions at all hazardous waste sites whether or not they qualify for federal Superfund monies. There are over 200 sites in Massachusetts which are under investigation to determine whether hazardous wastes are present.

Under the Superfund, Massachusetts must contribute at least 10% of the actual costs for clean-up of privately-owned sites, and 50% for publicly-owned sites. Currently, DEQE has a total of \$200,000 to "match" Superfund as well as performing investigations and remedial action at other sites. This demonstrates the urgency of passing Massachusetts' own proposed \$25 million hazardous waste clean-up legislation, Chapter 21E. The major provisions of the bill are summarized below.

To date, 50 hazardous waste sites have been cleaned up in Massachusetts. Approximately 74% of these have been financed by private owners or responsible parties as a result of vigorous enforcement actions.

SITES ON EPA NATIONAL PRIORITY LIST

ACTON, W. R. Grace*
ASHLAND, Industrial Park (Nyanza)
BRIDGEWATER, Cannons Engineering Corp.*
DARTMOUTH, Re-Solve, Inc.
GROVELAND, Wells #1 and #2 *
HOLBROOK, Baird & McGuire, Inc.*
LOWELL, Silresim
NEW BEDFORD HARBOR
PALMER, PSC Resources*
PLYMOUTH, Cannons Engineering Corp.*
TYNGSBOROUGH, Charles George Landfill
WESTBORO, Hocomoco Pond*
WOBURN, Industriplex
WOBURN, Municipal Wells G & H*
* newly added

MASSACHUSETTS OIL AND HAZARDOUS MATERIALS CLEAN-UP FUND:

KEY ASPECTS OF PROPOSED LEGISLATION

- Provides \$25 million bond fund for state emergency response actions and clean-up of confirmed hazardous waste sites;
- Persons responsible for a release of oil and hazardous material are strictly liable for clean-up costs. Bill also provides for "apportioned liability";
- Treble damage liability;
- Extends statute of limitations for DEQE civil actions;
- Costs incurred by Commonwealth are given priority lien status on the properties involved, after municipal taxes;
- DEOE is authorized to order persons responsible for a release to undertake necessary response actions.

- BRIDGEWATER and PLYMOUTH: Cannons Engineering Corporation. The two hazardous waste storage and treatment facilities contained thousands of gallons of industrial solvents and waste oils stored in deteriorating above-ground tanks and 55-gallon drums. The DEQE hired a contractor to initiate clean-up measures in October of 1982, costing \$750,000. The project consists largely of pumping and cleaning the bulk storage tanks: the Bridgewater site had about 200,000 gallons in bulk storage; the Plymouth site has about 500,000 gallons. At the Bridgewater facility, samples were taken from 711 55-gallon drums, the drums were repackaged and removed, and soils also were sampled. Some soil excavation may be also necessary.

- HOLBROOK: Baird & McGuire, Inc. The firm discharged untreated wastewater containing creosote, herbicides and other chemicals into nearby wetlands and the Cochato River. By Department order, the firm is: financing a detailed study to evaluate the extent of chemical contamination; examining remedial action alternatives; stopping the discharge of untreated wastewater; and removing any hazardous waste present.

- MIDDLEBORO: J & G Auto Salvage. The Department completed, on August 30, 1982, the removal of 384 drums of hazardous waste (consisting of compounds commonly found in industrial solvents) at a cost of \$114,000. The project consisted of: excavating 100 cubic feet of contaminated soil surrounding the drums; testing and classifying samples; and repackaging and ultimately disposing of the illegally dumped barrels and contaminated soil. Further remedial action at this site may be necessary as additional soil data is reviewed. The Attorney General intends to recover the clean-up costs from the owner.

- PALMER: PSC Resources. This abandoned oil storage and processing facility covers two acres and consists of 22 storage tanks containing 500,000 gallons of waste oil and organic chemicals. The Department ordered the owner, Newtown Refining Corp., to secure the site; the Attorney General's Office filed suit against the owner on July 1, 1982. The firm's remedial action plan, approved by the Department, includes both sampling analyses and waste removal. The firm initiated sampling September 4th of last year; removal of wastes in storage and decontamination of tanks was initiated on December 4, 1982. This work will be followed by a soil and groundwater assessment and possibly additional remedial work.

- WORCESTER: Eastern Chemical Specialties. One hundred and sixty 55-gallon drums of stillbottom wastes from solvent recovery processes were abandoned. By Department order, the firm began clean-up in October of 1982 of barrels located outside the building on the property; remedial action cost \$28,891. The Department will hire and finance a contractor to remove the wastes stored inside the building and will pursue cost-recovery from other responsible parties.

- BERKELEY: SCA/CAL's Landfill. The Department and SCA have signed a consent decree in which SCA agrees to take remedial action to prevent further hazardous waste leachate from contaminating the surrounding area. For a number of homes with contaminated drinking water, SCA drilled new wells and has agreed to provide water for any homeowners who, in the future, may lose their wells to contamination caused by the landfill. In a separate action, the Attorney General's Office and DEQE have filed a complaint against Calvin Overlock, the former operator of the facility.

EVALUATION COMPLETE: CHWC PROGRAM

An evaluation of the Community Hazardous Waste Coordinator (CHWC) Program, recently completed by the Division, found that the Program is an important element of Massachusetts' comprehensive hazardous waste management program. The evaluation was initiated to determine: what the coordinators initially understood their responsibilities to be; what the activities of the coordinators are (i.e., both local issues and planning activities); and what can be done to improve the effectiveness of the CHWC program and/or local hazardous waste management. The information for the evaluation was gathered by distributing questionnaires to all CHWCs, interviewing CHWCs, interviewing DEQE staff, interviewing representatives of environmental organizations, and receiving recommendations from the CHWC Steering Committee.

The recommendations for improving the program, made by the participants, centered around improving communication between DEQE and CHWCs/communities and strengthening ties between the Department and CHWCs. Although only the CHWCs and other municipal officials can make the program work where it counts -- in Massachusetts communities -- DEQE can provide CHWCs with additional assistance. More detailed information on the evaluation will be sent to the CHWCs shortly.

For more information on the CHWC Program and on the evaluation, contact your local Community Hazardous Waste Coordinator or Betsy Goggin, DEQE, (617) 292-5630.

NORTHEAST WASTE EXCHANGE PUBLISHES FREE CATALOG OF LISTINGS

The Northeast Waste Exchange provides a service to industry by putting waste generators in touch with waste users, with the goal of minimizing waste disposal expenses and maximizing the value of wastes. Their 7th Listings Catalog, which contains over 275 waste listings, is available from the Exchange for free.

Listings for "Materials Available" and "Materials Wanted" are accepted for a \$25 fee and are published for a year. Each listing receives a confidential code number; inquiries about a specific waste listing are then promptly forwarded by the Exchange to the company placing the request. That firm will then choose the respondents with whom it wishes to negotiate. The Exchange will not participate in any negotiations. Only the staff managing the daily activities of the Exchange has access to the index relating code numbers to company names.

Free copies of the Listings Catalog and information about listing a waste can be obtained from Mr. Walker Banning, Northeast Waste Industrial Waste Exchange, 700 East Water St, Rm. 711, Syracuse, N.Y. 13210, or (315) 422-6572.

IMPORTANT! READ IMMEDIATELY

The Hazardous Waste Update's mailing list is being updated: Please check your address, which appears on the reverse of this section, for accuracy. Make any necessary changes on the label and send to the attention of the Update. Also check the central, 2-digit number which appears above your name and address on your mailing label. If that number is one of the following, and you do not wish to be purged from our mailing list, you must respond BEFORE MARCH 15, 1983:

01; 02; 03; 06; 11; or 12.

If you are in one of the above categories, return this portion to the DEQE Division of Hazardous Waste, One Winter Street, Boston, MA 02108, Attn: Update by 3/15/83.

Finally, we always welcome any comments you may have on the Hazardous Waste Update!

NOTICES FOR HEARINGS AND MEETINGS

HAZARDOUS WASTE MANAGEMENT ACT, 310 CMR 30.000

The Phase II Draft regulations setting forth design and performance criteria for facilities which treat, store, use and dispose of hazardous waste will provide TSDF facilities with location standards and set the means for assuring their financial responsibility. Copies of the proposed regulations will be available by March 1st for inspection through each free public library system in the Commonwealth, Regional Planning Agencies, DEQE Regional Offices, Community Hazardous Waste Coordinators, and at the DEQE Boston Office by March 1st. The public hearing schedule follows:

April 7 7:30-10 p.m.	Plymouth Town Hall hearing room	April 11 7:30-10 p.m.	Fall River City Hall conference room	April 13 7:30-10 p.m.	Worcester UMass Med Ctr Amphitheater 1
April 14 10 a.m.-12:30	Boston Cabot Auditorium 3 Joy Street	April 19 7:30-10 p.m.	Springfield Spfld Tech Comm Coll Bldg. 17, Room 122	April 21 7:30-10 p.m.	Haverhill No Essex Comm Coll 100 Elliot Street Library conf rm
April 26 7:30-10 p.m.	Pittsfield WMECO, 333 West Street public hearing room				

Written comments should be sent, no later than May 15, to Steven Dreeszen, Director of the Regulatory Task Force, Division of Hazardous Waste, One Winter St., Boston MA. 02108.

DISPOSAL OF SOLID WASTES BY SANITARY LANDFILL, 310 CMR 19.00

Environmentally sound solid waste land disposal operations are critically important to minimize adverse impacts to public health and the environment. A discussion draft of solid-waste regulations will bring the 1971 standards for the design and operation of landfill facilities up-to-date, and will advance groundwater protection requirements for existing and new sanitary landfills. Location standards protecting surface waters and wetlands also will be set forth.

Workshops on the discussion draft of these regulations will be held in the early spring. For the schedule of workshops or more information, contact Mark Lyons at (617) 292-5630.

LAND APPLICATION OF SLUDGE AND SEPTAGE, 310 CMR 29.00

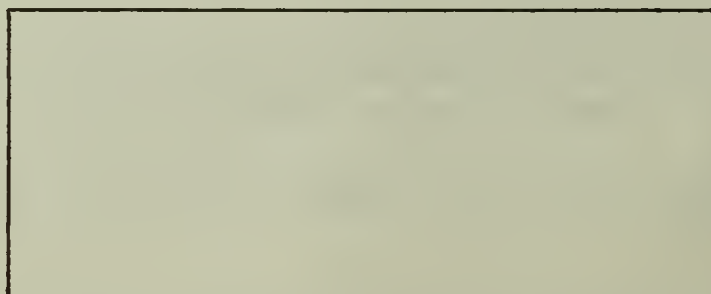
Sludge and septage contain nutrients and organic material which are beneficial to the soil and to plants; however, they may also contain heavy metals, organic chemicals and pathogens which can be potentially harmful. By requiring the use of proper management controls through regulation, the Department proposes to establish a framework within which non-hazardous waste and septage may be land applied in a manner which guarantees the protection of public health, agricultural and water resources.

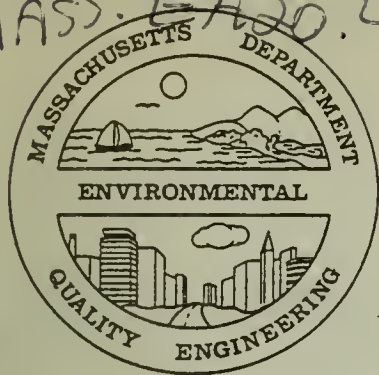
Public hearings on these regulations will be held in the spring. For more information, contact Fifi Nessen at (617) 292-5630.

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Division of Hazardous Waste
One Winter Street
Boston, Massachusetts 02108

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PHASE II HAZARDOUS WASTE PUBLIC HEARING DRAFT REGULATIONS

The proposed regulations include technical design and performance standards, as well as location standards, for both existing and new hazardous waste treatment, storage and/or disposal facilities in Massachusetts. Promulgation of Phase II regulations is necessary for Massachusetts to receive federal authorization to take over the facility licensing portion of the federal hazardous waste program from EPA. The Commonwealth already has interim authorization from EPA for the Phase I hazardous waste program. The state regulations must meet at a minimum the federal regulatory requirements, but they may be, and in several instances are, more stringent.

The Regulatory Task Force of the Division of Hazardous Waste has worked closely with the Hazardous Waste Advisory Committee in developing these proposals. The following synopsis highlights issues which received considerable discussion. It is not meant to summarize all of Phase II, but rather to point out those aspects which the Regulatory Task Force feels require further deliberation. If you have any questions on the regulations, contact the Task Force at (617) 292-5630. The Department invites extensive public review and comment on the public hearing draft, before preparing the regulations for promulgation this summer. A complete schedule of the public hearing dates was included in the last issue of the *Update*. Standards set forth in the proposed Phase II regulations address the following key areas:

RECYCLING: The proposed regulations reflect an intent to encourage hazardous waste recycling, while maintaining necessary regulatory supervision. Special standards have been developed for cases where a generator recycles its own waste and where a second party recycles a generator's waste. The Regulatory Task Force considers this appropriate because the waste stream from a single manufacturing process is consistent and more amenable to recycling. The requirements of using a manifest form, licensed transporter, and obtaining a storage license have been waived for these recycling activities, while various management standards and technical standards have been retained. These special standards apply *only* to industries whose primary business is not recycling hazardous waste. Should an industry have as its primary business purpose the recycling of hazardous waste, it would be considered a hazardous waste facility and be subject to the full set of licensing requirements.

FINANCIAL RESPONSIBILITY: The purpose of this section of the proposed regulations is to ensure that adequate funds are available to suitably close the facility and provide post-closure care if necessary, and to set minimum insurance limits to cover third-party damages in the event of sudden accidents or non-sudden gradual events. The proposed financial regulations differ from the federal EPA requirements in several respects:

- Neither the "financial test" nor corporate guarantee is included as an option for either closure/post-closure funding or as a substitute for third-party liability insurance.
- Sudden/accidental insurance limits required are \$3 million per incident/\$6 million annual aggregate (EPA: \$1m/\$2m).
- Non-sudden gradual environmental insurance limits are \$5 million per incident/\$10 million annual aggregate (EPA: \$3m/\$6m).
- Cost estimates and funding for closure must not be lumped in with similar requirements for out-of-state facilities owned by the same company.

The Department seeks comment on the appropriateness of these liability insurance levels and other departures from EPA's approach.

SURFACE IMPOUNDMENTS: The provisions for new impoundments include requirements for: a double liner with a leak detection, collection and removal of all wastes and waste residues at closure; and location standards. Additionally, standards for existing impoundments have been proposed. Some commenters have suggested that owners and operators of existing impoundments be required to retrofit their facilities to meet the standards for new impoundments. Although retrofitting of impoundments has not been proposed in the public hearing draft, the Regulatory Task Force still considers this a regulatory option and seeks further comment on it.

LANDFILLS: To protect public health and the environment, because hazardous waste landfills have frequently caused problems and technology is not yet proven, the Regulatory Task Force believes that there should be stringent restrictions on what hazardous wastes are allowed in landfills as well as where they may be located. The proposed regulations contain the following provisions: 1) an absolute ban on the disposal of liquid wastes in landfills; 2) prohibition on the landfilling of ignitable, reactive or incompatible wastes; 3) prohibition on the landfilling of sludges and solids containing halogenated organic compounds in concentrations greater than 1,000 mg/kg, and on all identified acutely hazardous wastes; 4) a requirement that owners and operators of facilities submit to the Department and implement a waste stabilization/solidification plan.

LAND TREATMENT: The regulations propose that a license for a land treatment facility be issued to an applicant *only after* it has been demonstrated to the Department that the treatment is feasible and suitable for the site. Lab studies, field studies, and compilation of data on past land treatment practices of similar wastes under similar conditions may be used to make this demonstration. Additionally, operating and monitoring standards for land treatment facilities are proposed.

PHASE II HAZARDOUS WASTE PUBLIC HEARING DRAFT REGULATIONS *(continued)*

INJECTION WELLS, LEACHING FIELDS, SEEPAGE PITS: The draft regulations propose a complete ban on the injection of hazardous wastes through wells, as well as the disposal of hazardous waste through leaching fields or seepage pits.

GROUNDWATER MONITORING: The groundwater monitoring requirements proposed in Phase II are substantially different from those in the discussion draft. The revisions address the need for corrective action when groundwater is contaminated and define more specific monitoring parameters relative to the wastes being stored, treated or discarded. If a monitoring well downgradient from compliance monitoring shows statistically different levels of constituents than the levels permitted in the facility license, corrective action must be taken. Several major issues in need of public comment are the exclusion provisions, the allowance of alternate concentration limits in certain cases where contamination has been detected, and proposed statistical methods. The proposed regulations also extend the owner/operators obligation for corrective action to contamination which has migrated off the facility site, a feature which is not included in the federal regulations.

USE AND MANAGEMENT OF CONTAINERS: The proposed regulations include several "good housekeeping" standards for the use and management of containers by owners and operators of facilities and by generators of hazardous waste, such as properly labelling containers. Generators and facility owners/operators would be required to comply with the labelling standards throughout the period of accumulation or storage. Containers shall be marked and labelled in a manner which: identifies the contents of the container as "Hazardous Waste"; identifies the waste (e.g., toluene, acetone); indicates the hazards associated with the waste (e.g., toxic, corrosive); and indicates the date at which accumulation began.

STORAGE AND TREATMENT OF HAZARDOUS WASTE IN TANKS: The public hearing draft includes a detailed set of proposed standards for *NEW ABOVEGROUND AND NEW UNDERGROUND TANKS*. These standards require that such tanks be installed with secondary containment systems to ensure adequate safeguards in the event of ruptures or leaks. Owners and operators of all *EXISTING UNDERGROUND TANKS* would be required to demonstrate, using hydrostatic tests, if appropriate, that their underground tanks are not leaking. Any tank found to be leaking must be repaired, replaced or taken out of service. Owners and operators of *EXISTING ABOVEGROUND TANKS* would be required to install secondary containment (backup) systems unless it is demonstrated to the Department that such an installation is infeasible.

LOCATION STANDARDS: The proposed regulations prohibit new or expanding waste piles, impoundments, landfills or land treatment facilities from locating within lands subject to flooding from a 500-year frequency storm. Existing storage and treatment facilities which are located within the 100-year floodplain must be floodproofed. Also, all new off-site storage and treatment facilities would be prohibited from land subject to flooding from the 100-year frequency storm. The Regulatory Task Force is seeking comment on whether or not this prohibition should be applied to existing generators of hazardous waste who are already located in land subject to flooding and

who wish to gain facility status (e.g., store waste for more than 90 days).

For land disposal facilities, the proposed location standards which protect existing, planned and potential public underground drinking water supplies have been developed assuming a worst-case scenario (e.g., both the containment systems and remedial action efforts fail), and represent a very conservative approach to the protection of public underground drinking water supplies.

Three alternative regulatory strategies for protecting existing private wells from hazardous waste landfill activities are presented in the draft regulations. They are:

- 1) Set a buffer zone distance between the facility and existing downgradient wells based upon an estimated time of travel (e.g., 20 years) that groundwater leaving the facility would reach those wells;
- 2) Prohibit the siting of a landfill facility if private wells are located at any distance downgradient from the proposed facility; or
- 3) Set minimum buffer zone distance e.g., 2500 feet) between the facility and existing private wells.

A similar set of alternatives designed to protect potential private water supplies is outlined in the public hearing draft. The Regulatory Task Force seeks comment on which approach is preferable.

Other location criteria that the Department may consider in evaluating the suitability of a site for a hazardous waste facility include: 1) The transportation risks associated with wastes arriving to or from the facility; 2) The adequacy of buffer zones between the active portion of the facility and areas of public access; 3) The population density in the vicinity of the facility site; and 4) The proximity to schools, hospitals, sensitive receptors, etc.

TRANSPORTER LICENSES

The Division has begun the new licensing process for hazardous waste transporters and one hundred and thirty firms have submitted complete license applications. To be licensed, hazardous waste transporters must, among other things: *establish an employee training program* for all personnell who handle hazardous waste; *keep a guide to emergency procedures* in each vehicle; obtain *minimum insurance coverage of \$1-million* per accident for personal injury, property damage, and environmental restoration; and *provide proof of bonding* in the amount of \$10,000.

The licensing procedure involves a two-stage public review process. Notice of each complete application is published in the *Masachusetts Environmental Monitor*, a bi-weekly publication issued by the Executive Office of Environmental Affairs, and the first 21-day public review period follows. Assistance from other agencies is very important here; the state police, municipal agencies, and other states have provided information on the applicants. After applications have been thoroughly reviewed technically, notice of draft license approvals appear in the *Environmental Monitor*, and the second 21-day public comment period follows. The Licensing Branch of the Division will answer any questions on the application process and respond to requests for lists of licensed transporters.

LAND APPLICATION OF SLUDGE AND SEPTAGE REGULATIONS

Public hearings will be held on the proposed regulations for land application of sludge and septage during the first week of April. When promulgated, these regulations will enable communities and individuals to take advantage of sludge and septage recycling technology and benefit from the soil building and nutrient resources in sludge and septage, while safeguarding the environment, public health, and agricultural resources. The proposed regulations provide that:

- 1) departmental approval be obtained for the sludge and septage use prior to land application;
- 2) sludge and septage meet specific standards of quality, based upon the category of intended use, including criteria for the level of pathogen reduction and for concentrations of heavy metals and PCBs;
- 3) sludge and septage be separated in three categories of intended use: Type I—unrestricted use; Type II—agricultural use; Type III—non-agricultural use;
- 4) use of Types II or III sludge or septage meet certain criteria for both the method and site of application;
- 5) storage, transportation, and conveyance standards and requirements are met.

The public is encouraged to attend the hearings on these regulations and to comment on them. Copies of the regulations may be found at DEQE Offices, Boards of Health and Public Libraries. Comments on the proposed regulations should be submitted in writing no later than May 13, 1983 to Fifi Nessen, Division of Hazardous Waste.

Schedule of Hearings

April 7, Danvers, 10-12 a.m.	Field House, Essex Agricultural and Technical Institute, Maple Street, Danvers
April 11, Lakeville, 10-12 a.m.	Auditorium, Lakeville Hospital, Route 105, Lakeville
April 12, Worcester, 2-4 p.m.	Amphitheater #2, University of Massachusetts Medical School, off Rte. 9, Worcester
April 14, Amherst, 7-9 p.m.	Room N-344, Western Massachusetts Public Health Center, University of Massachusetts Campus, Amherst

ENFORCEMENT AT HAZARDOUS WASTE SITES

WARREN: A total of 55 indictments charging Raymond Samek of North Brookfield, two of his sons, and Robert Shover of Warren stemming from violations of the Hazardous Waste Management Act were returned January 13th by a Worcester County Grand Jury. Samek allegedly illegally disposed of hazardous waste on property he owned and operated as a junkyard off Reed Street in Warren. In addition, it is alleged that the four defendants illegally collected and disposed of hazardous waste on another piece of property located off Reed Street in Warren. The indictments came as a result of an intensive six-week investigation conducted by the Attorney General's Office in cooperation with the Department of Environmental Quality Engineering.

ASHLAND: On January 26th, DEQE signed a \$500,000 Superfund contract with the U.S. EPA. The contract authorizes a study of clean-up plans for the Nyanza hazardous waste site in Ashland. The study will determine the nature and extent of environmental health problems as well as recommend the most environmentally sound and cost-effective clean-up of the site. EPA will pay 90% of the study cost, with the state contributing a 10% share. DEQE and EPA are undertaking enforcement actions involving the owner of the Nyanza site.

DRAFT SANITARY LANDFILL REGULATIONS

About 6.5 million tons of solid waste are landfilled in Massachusetts every year in over 280 sanitary landfills. The land disposal of solid waste can adversely affect human health and the environment. This is a problem which transcends all the traditional distinctions made between air pollution, water pollution, and drinking water supply contamination. Many sanitary landfills are generating leachates which are degrading our precious water resources. Although we do not know precisely how bad the problem is at every landfill site, we do know that this problem must be addressed to protect public health and the environment. The draft regulations contain groundwater monitoring requirements which will help local officials and the Department determine just how bad the contamination problems are and what should be done about them; the discussion draft is one part of an overall strategy to address solid waste problems in the Commonwealth. The discussion draft regulations also contain minimum environmental and public health protection measures which are intended to prevent future water supply contamination incidents and other problems. Key issues raised in the discussion draft sanitary landfill regulations are:

- **Groundwater:** The Department is seeking to protect resources from contamination by landfills through: facility siting; facility design; facility operation; and groundwater monitoring
- **Special Wastes:** To achieve consistency with other state and federal regulatory programs, the Department proposes to change the definition of special waste to "material requiring special handling and procedures for proper disposal, as determined by the Department." In addition, a clear mechanism for Departmental review of proposals for special waste disposal is created.
- **Coal Ash:** Management standards for coal ash disposal at landfills are discussed, and criteria for the use of coal fly ash as daily and intermediate sanitary landfill cover material are proposed. The development of dedicated coal ash landfills is suggested.
- **Floodplains, Surface Waters and Wetlands:** The Department proposes that new sanitary landfills will be prohibited from locating within floodplains and wetlands or over significant aquifer recharge areas.
- Other issues addressed by the proposed regulations are: **Endangered Species; Air; Disease; Safety; and Asbestos.**

Copies of the Sanitary Landfill Regulations Discussion Draft have been sent to Boards of Health, Regional Planning Agencies, environmental organizations, and other interested parties.

DOT GRANT RESULTS

DEQE was awarded a \$78,132 contract in late 1981 by the U.S. Department of Transportation to assist in the development of the state's hazardous materials emergency response plan. Energy Resources Co., Inc. (ERCO), a science and technology consulting firm located in Cambridge, undertook the project on behalf of the Department. It outlined the nature and scope of hazardous materials transportation in the Massachusetts region, and the region's existing capabilities to respond to hazardous materials incidents. The results of the study will be soon published. For more information, please contact Jan Connery or Dave Meyers at ERCO (617) 661-3111.

COMMUNITY COORDINATOR SUPPLEMENT

HAZARDOUS MATERIALS TASK FORCE

After the 1979 Somerville incident, the Commonwealth initiated the Hazardous Materials Task Force. With assistance from the U.S. DOT grant and the Energy Resources Company, the Task Force, which represents state, federal and local agencies and industry, has prepared the HAZARDOUS MATERIALS INCIDENT OPERATION PLAN. This plan, which will be inserted into the Commonwealth's Comprehensive Emergency Response Plan: defines the nature of hazardous materials incidents; lists the responsibilities of local, state and federal authorities; and presents a definitive plan of operation in the event of hazardous materials incidents. Other accomplishments of the Task Force include agreements between Massachusetts and the U.S. Environmental Protection Agency as well as U.S. Coast Guard.

At a January 11, presentation to the Special Legislative Commission on Hazardous Waste, the Task Force concluded that:

- the Commonwealth's ability to prevent and respond to hazardous materials incidents, particularly trucking accidents, must be improved;
- municipal public safety officials need additional training on the identification of and response to hazardous materials incidents;
- the state's hazardous material incident operations plan must be tested and consistently updated; and
- municipalities and/or regional groups of towns and cities must develop counterpart plans which mesh with the state's plan.

LEXINGTON HOLDS DAY FOR HOUSEHOLD HAZARDOUS WASTE COLLECTION

Last October, the Town of Lexington and the League of Women Voters co-sponsored an innovative program to reduce

the quantity of household hazardous wastes to be discarded in nearby landfills, which could degrade groundwater and cause safety hazards at the landfills. A professional waste recycling company was contracted to collect small quantities of household hazardous waste at the Lexington DPW barn for six hours on a Saturday. On site, the contractor's chemist sorted the wastes into chemically compatible groups, and then the wastes were packed for transport to the contractor's transfer station. In total, 94 Lexington residents brought together fourteen 55-gallon drums of waste ranging from paints and pesticides to radiator flushes, drain cleaners, and a home chemistry set.

Lexington has provided a model for other towns interested in reducing the amount of household hazardous wastes in landfills and its efforts should be applauded. A number of the DE-QE licensed transporters may be interested in contracting with your town to hold a collection day; for a list of these firms please call us at (617) 292-5630.

A HAZARDOUS MATERIALS INCIDENT SEMINAR & SIMULATION

A two-day training course on cooperative incident management will be held May 6th & 7th in Portsmouth, New Hampshire. The course is designed for first-line responders, local, state & federal agency personnel and industry representatives, and will include: fire toxicology; initial response procedures; decontamination procedures; containment/recovery; and much more. Further information may be obtained from: Environmental Hazards Management Institute (EHMI), P.O. Box 283, 45 Pleasant Street, Portsmouth, NH, (603) 436-3950. EHMI is a non-profit public interest organization solely dedicated to public education and training in the fields of hazardous waste and hazardous materials. EMHI also sponsors the Northeast Conference on Hazardous Waste which has been held annually for five years.

Groundwater Protection Workshops

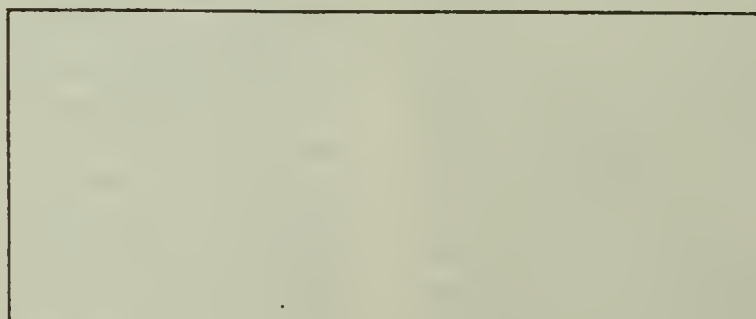
This spring the Massachusetts Audubon Society is co-sponsoring a number of workshops focusing on groundwater protection. A schedule of these workshops follows:

Saturday, April 23	9:00 am - 3:30 pm Admission Free	<i>Industrial Growth and Groundwater Protection for Neponset Valley Communities.</i> Canton Townhall; Co-sponsored by the Canton Board of Selectmen.
Thursday, April 28	7:30 p.m. Admission Free	<i>Groundwater in Franklin County: Where & how can we find it?</i> Franklin County Court House, Greenfield; Co-sponsored by the Franklin County Planning Department & the Extension Service.

For more information, future listings, contact Lyn White of the Massachusetts Audubon Society, Lincoln, 01773. Their phone number is (617) 259-9500.

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Anthony D. Cortese, Sc.D.
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THE MASSACHUSETTS OIL AND HAZARDOUS MATERIALS RELEASE PREVENTION AND RESPONSE ACT OF 1983

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On March 24, 1983, Governor Michael S. Dukakis signed the new "Massachusetts Oil and Hazardous Materials Release Prevention and Response Act". This Act (Chapter 7 of the Acts of 1983) greatly expands DEQE's authority to protect citizens and the environment from hazardous substances. The law encourages the prevention of releases of oil and hazardous materials, ensures that individuals responsible for releases pay the full cost of clean-up, and provides funds and authority for clean-up when those responsible fail to take appropriate action or cannot be identified.

The statute generally constitutes a state counterpart to the 1980 federal "Comprehensive Environmental Response, Compensation, and Liability Act" (CERCLA), which is commonly known as "Superfund". The new Massachusetts law provides funding for: 1) the state's share of projects funded under CERCLA; 2) non-CERCLA site clean-up efforts to be financed wholly by the state; 3) continuation of the State Emergency Response Program; and 4) other related activities.

While the new Act is not a panacea, it aims to correct some deficiencies in previous state legislation:

- *Existing funding was inadequate to assure state match for all federal Superfund projects in Massachusetts and the Commonwealth's ability to respond to anticipated major hazardous materials emergencies in the near future.* The federal Superfund provides assistance to projects for clean-up of select hazardous waste sites. Federal aid will pay for 90% of the costs of clean-up of privately-owned sites, and up to 50% of clean-up costs for state and municipally owned sites. The federal contributions must be matched by the state to make up the balance of the cost. The emergency response program had been funded by bonds and special appropriations. DEQE has spent most of these funds, and new funding was needed for both federal CERCLA projects and for state clean-up efforts.
- *Existing enabling legislation did not give Massachusetts sufficient authority to respond to all types of emergencies involving oil and hazardous materials.* Prior to the Act, DEQE could only respond to releases and threats of release of oil and hazardous materials when an impact on water quality could be demonstrated.

The law that was signed in March reflects a long and difficult process to reach consensus on these complex issues.

KEY ASPECTS OF THE ACT

The most important objectives of the new law are:

- To encourage the prevention of releases of hazardous waste, hazardous materials and oil;
- To facilitate clean-up of releases of oil and hazardous materials when responsible parties cannot be identified or fail to take appropriate actions; and
- To ensure that individuals assume responsibility for the *full* cost of cleaning up releases for which they are responsible.

To these ends, the Act established a \$25-million fund for state response actions and expanded DEQE's enforcement authority.

GENERAL ENABLING AUTHORITY (Section 5)

The Act adds to the General Laws a new Chapter 21E, "The Massachusetts Oil and Hazardous Material Release Prevention and Response Act", which provides DEQE with wide-ranging authority to deal with emergency situations. The law upgrades previous DEQE authority and is a Massachusetts counterpart to CERCLA.

RESPONSE AUTHORITY: *DEQE may take a wide range of actions necessary to contend with releases and threats of release of oil and hazardous materials.* These actions may include site assessments as well as containment and removal actions.

NOTIFICATION: *Immediate notification to DEQE* is required when there is a release or threat of release of oil or hazardous material.

EXPANDED ENFORCEMENT: These provisions were intended to prevent, to the extent possible, the Commonwealth from assuming the full costs and responsibilities for clean-up. Specifically:

- The new Act expands the categories of people who are potentially liable to both the Commonwealth for repayment of DEQE response costs and to other people for damage to or loss of real or personal property. Subject to narrowly-drawn defenses and limitations, responsible people are *strictly liable, jointly and severally*. This provision is more explicit than liability established by CERCLA.

- Individuals responsible for a release or threat of release for which the state incurs clean-up costs are *strictly liable for up to three times the State's costs*. Treble damages are set to act as a disincentive to people who may think they will pay after the Commonwealth has completed its clean-up operation. These damages are not intended solely to be punitive, but reflect the overall costs (including debt service) of financing state clean-up efforts by general obligation bonds.

- The law establishes a *five-year statute of limitations* for actions brought to recover response costs. The five-year period is to begin at the later of two events: the date on which the State incurs the costs; or the date on which the State identifies the person responsible for the release or threat of release.

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IMPLEMENTATION

In implementing the new Act, DEQE faces a complex set of issues and many responsibilities. The Department must develop and implement several sets of plans, regulations and procedures in the near future. These programs will build on the agency's experience in responding to spills of hazardous materials, in the context of federal requirements under the Comprehensive Emergency Response, Compensation, and Liability Act, and under other federal and state requirements such as RCRA and resource management obligations. Implementation procedures must be flexible to allow DEQE to respond to problems raised by unique sites and situations, and by ever-changing technology.

These programs will directly affect communities and industry. For these efforts, input will be sought from broadly-based advisory groups. Representatives from industry, public health organizations, municipal officials, and public interest and environmental groups are being asked to assist DEQE in developing plans and regulations that are responsive to their concerns.

MAJOR PROGRAMS ELEMENTS

- **MASSACHUSETTS CONTINGENCY PLAN.** This document will provide a framework for decision-making. It will include standard operating procedures for handling emergency and non-sudden releases of hazardous materials. In addition, the plan will contain methods for ranking Massachusetts sites for enforcement and/or clean-up action.

The plan will be developed by the Office of Incident Response in the Division of Hazardous Waste. A draft is expected to be available for public discussion by October, 1983. However, under Chapter 7, DEQE does not have to wait until this Plan is ready in final form before responding to either emergency or non-sudden releases: the agency can take action before the Plan is approved.

- **RELEASE NOTIFICATION REGULATIONS.** When there is a release of hazardous materials or a threat of a release, DEQE must be notified immediately. Since Chapter 7 defines "release" and "threat of release" in broad terms, DEQE must develop regulations to define the circumstances in which notification is required, and describe the notification process. In addition, DEQE is establishing a system for coordinating the State's responses triggered by notices of release.

DEQE hopes to promulgate emergency regulations defining requirements for notification of spills by July 1, 1983. A public hearing will then be held within 90 days.

Chapter 21E authorizes DEQE to assure that trade secrets are protected. DEQE anticipates using the procedures in regulations adopted (310 CMR 3.00) under the comparable provision of the Massachusetts Hazardous Waste Management Act (G.L. Chapter 21C, Section 12) as the basis for protecting trade secrets under the new law. DEQE's Office of General Counsel is reviewing these regulations to identify changes needed to maintain confidentiality in implementing Chapter 21E. Any new regulations will be released in conjunction with regulations governing notification of releases.

- The new Act provides both *civil and criminal penalties for violations* of the new law of \$25,000 per violation per day, plus the potential of five years imprisonment for individuals. These sanctions may be imposed in addition to liability for other costs.

- DEQE may take *administrative actions* to remedy situations without first going to court. Liable individuals may be ordered to assess the site, or to take containment or other response actions as DEQE deems necessary. People subject to a DEQE administrative order have the right to seek administrative and judicial review.

CONTINGENCY PLAN: DEQE is to prepare a *Massachusetts Contingency Plan* covering both emergency response and remedial actions. The Plan will serve as a frame of reference for response actions taken by DEQE and other parties. The Plan will include standard operating procedures for responses to releases (e.g., decision making and site assessment guidance), and a method for the ranking of Massachusetts sites for clean-up action. Because it may take some time for this plan to be finished, the statute also gives DEQE authority to respond to releases before the contingency plan has been developed.

PREVENTIVE MEDICINE: The new law gives DEQE authority to *regulate activities when necessary to prevent releases of hazardous materials*. The "Preventive Medicine" requirements are intended to avert the likelihood of releases and to enable quick response should releases occur. This section underscores a *preventive*, as opposed to reactive and enforcement-oriented, approach to dealing with releases and threats of releases. This does not have a CERCLA counterpart and does not apply to oil storage.

FUNDING (Section 4 & Section 6)

The new law establishes a *\$25-million general obligation fund* (the "Oil and Hazardous Material Response Loan of the Acts of 1983") for State clean-up actions. It also specifies that funds received as fines and penalties under the Massachusetts Hazardous Waste Management Act and under the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, as well as funds recovered from clean-up actions, shall be applied to payment of debt service on short and long-term borrowing under the loan fund.

The Commonwealth must apply recovered funds to the General Fund to offset debt service payments on bonds used to cover the \$25-million appropriation. The difference between costs recovered for state response actions and the annual outlays for debt service will be collected by *fees imposed on hazardous waste transporters*. Fee levels will be reviewed annually.

SPECIAL COMMISSION (Section 13)

A special legislative study commission is established to determine the adequacy of existing liability provisions, including liability for third-party personal injury. The commission, which is composed of members of legislature and gubernatorial appointees, is to submit its findings and recommendation by December 7, 1983.

- Individuals responsible for a release or threat of release for which the state incurs clean-up costs are *strictly liable for up to three times the State's costs*. Treble damages are set to act as a disincentive to people who may think they will pay after the Commonwealth has completed its clean-up operation. These damages are not intended solely to be punitive, but reflect the overall costs (including debt service) of financing state clean-up efforts by general obligation bonds.

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- **HAZARDOUS WASTE TRANSPORTERS FEES.** Together with funds received in cost recovery actions, these fees will be used to pay back the principal and interest on the \$25-million oil and hazardous materials response loan. A fee schedule will be based on the quantity and type of waste transported. Exemptions may be provided to encourage waste recycling and reuse. The law specifies that the Commissioner of Administration must publish regulations containing a "schedule of reasonable fees" by August 30, 1983, and that the fee will take effect on or after January 1, 1984. The schedule is to be reviewed annually. The law states that "to the extent practicable" the revenues raised should cover the full costs of state response actions, less the amount received from cost recovery actions.

- **RELEASE PREVENTION AND CONTROL REQUIREMENTS.** Chapter 21E allows DEQE to specify requirement to prevent and control releases of *hazardous materials*. Until now, DEQE has regulated *hazardous wastes*, through the manifest system and proposed requirements for treatment, storage and disposal facilities (expected to be promulgated in final form in July, 1983).

To extend the existing regulatory framework, DEQE will determine which substances will be regulated, and how new requirements will be integrated into the on-going program. In addition, procedures for coordinating with other state regulatory agencies will also be developed.

The issues surrounding the control of hazardous materials are complex. The Division of Hazardous Waste's Regulatory Task Force will be addressing these and related issues with the help of a broad-based advisory group. The Department plans to gain a year of experience with the Phase II hazardous waste regulations for treatment and storage prior to developing hazardous materials regulations.

OTHER TASKS

- **ENFORCEMENT AND COST RECOVERY.** Chapter 7 authorizes DEQE to pursue enforcement actions against those who are liable for release of hazardous materials. DEQE can order a firm (or group of firms) to assess and clean-up a site. If a responsible party cannot be found or will not respond, DEQE is authorized to undertake clean-up actions, and to recover costs where possible.

The agency is now reviewing existing and potential enforcement cases to establish procedures and priorities for revising current actions and for managing future actions.

- **USE OF THE APPROPRIATION.** DEQE has estimated funding requirements for a five-year program for dealing with major oil and hazardous materials releases in the Commonwealth. On this basis of this estimate, the Legislature authorized \$25-million to fund response actions taken under the new law. Although this is a substantial fund, it is intended to pay for clean-up actions for which costs cannot be

recovered from private parties, and for which federal Superfund dollars are not available. The fund was not intended to cover all hazardous materials releases which may occur throughout the Commonwealth over the next five years. The appropriation must be available for clean-up of the most serious hazardous material releases.

To meet both of these objectives, DEQE will carefully target its funding to sites posing the most pressing environmental problems. To accomplish this, the agency must build upon its experience in efficient management of response action projects. DEQE will also use the broad enforcement powers obtained in Chapter 21E to promote the funding of response actions by responsible parties.

As it approaches the full use of the \$25-million appropriation, DEQE will assess remaining needs, and, if necessary, will recommend to the Legislature additional funding beyond the \$25-million bond issue authorized by Chapter 7.

- **LIAISON WITH THE SPECIAL LEGISLATIVE COMMISSION.** DEQE will be working with the Special Legislative Commission appointed by the Governor and the Leadership of the Legislature to resolve issues that were not settled at the time that the new Act was passed.

Since the creation of its first emergency response team, DEQE has gained considerable experience in managing complex and difficult response actions. Each response action presents unique technical challenges as site conditions vary considerably. DEQE will continue to build upon skills developed in the management of past projects to improve the efficiency and effectiveness of the program.

Successful implementation of the new Act will depend on the integration of its new requirements with the Department's ongoing responsibilities. The Department must use its current staff to develop detailed programs, since Chapter 7 did not include additional staff resources for DEQE. As the program gears up, additional staff and resources will be needed to implement the broad mandate for responding to releases of oil and hazardous materials under widely varying site conditions. These resource issues will be reflected as the Department budgets are prepared for the next fiscal year.

QUESTIONS AND ANSWERS ABOUT CHAPTER 21E

Q. Why do we need a new state law if we have the federal Superfund?

A. The federal "Comprehensive Environmental Response, Compensation, and Liability Act" (CERCLA, which is also referred to as "Superfund") provides funding for responses at the nation's hazardous waste sites. Only fourteen of the many Massachusetts hazardous waste sites have been included on EPA's national list of priority sites. There are another forty sites in Massachusetts which have been confirmed hazardous waste problems, and many more which are being evaluated to determine if they have hazardous waste problems. Federal funds will not be available to clean-up all of these sites which pose problems for the Commonwealth.

The funding provided by Chapter 7 will enable Massachusetts to pay its share (or "match") for clean-up projects for which CERCLA funding will be available. The new

Act also provides funding for clean-up actions at more sites which will not be designated for CERCLA funding.

In addition, the new state law aims to prevent hazardous waste problems before they occur, by regulating releases or spills of hazardous materials before they become wastes. There is no comparable provision in the federal CERCLA.

Q. What is the \$25-million bond fund, and how will it work?

- A. The new law authorizes Massachusetts to *borrow* up to \$25-million to finance response actions, assessments, and containment projects. These loans are backed by a pledge of the full faith and credit of the Commonwealth. With such financing, the entire costs of response actions are not paid for in the year in which they are incurred. Instead, they are "capitalized" and repaid in installments, together with interest, over the authorized borrowing period (in this case, 35 years).

Q. When will the money be available?

- A. The appropriation is now available for assessments and for response actions.

Q. How many sites will be cleaned up with the \$25-million fund?

- A. The \$25-million appropriated by the new law will have to be stretched in several directions. First, funds will be used to match federal Superfund expenditures for the fourteen sites on EPA's priority list. Even though the state's contribution to the costs of these projects can be as low as 10% of the total project costs, the actual state contribution may be larger for more complex and expensive projects. Remaining funds will be used for non-CERCLA projects. These will include assessment and response actions to be funded wholly by the State, for the State's Emergency Response Program, and for other aspects of the release prevention program.

With all of this competition for resources, the number of sites to be cleaned up will ultimately depend on the ability of the Commonwealth to encourage people to take responsibility for spills or releases. In this respect, the most important aspects of the new law may lie in the Department's authority to order people responsible for releases to clean them up, and in the accompanying financial incentives (such as treble damages) for taking appropriate action.

Q. Where will the money come from to retire the bonds?

- A. The bonds will be repaid as they become due during the 35-year period from the General Fund of the Commonwealth. These payments from the General Fund will be offset by revenues from fees that will be levied on hazardous waste transporters and from funds recovered from people responsible for releases or spills of hazardous materials.

Q. How will the levels of fees levied on hazardous waste transporters be set?

- A. Every year over the 35-year life of the bonds, the difference between the amount paid from the General Fund to retire the bonds and reimbursements to the General Fund for the Commonwealth's expenditures for assessments and clean-up actions by people who are responsible for spills and releases will be determined. The difference will be made up by fees paid by hazardous waste transporters. Resource needs will be reviewed annually, and new fee schedules set for hazardous waste transporters at that time.

Q. What is meant by strict liability? Joint and several liability?

- A. "Strict liability" is a legal term applied to activities that are considered to be *inherently dangerous*. Where a law specifies that an action is subject to strict liability, someone who has been harmed by an inherently dangerous activity does not have to prove that the person responsible for causing the harm has been negligent.

"Joint and several" liability refers to situations in which there is more than one person responsible for an injury suffered (or cost incurred) by another person. Where liability is "joint and several", any one of the people responsible for a release may be held accountable for *some or all* of the costs incurred by the Commonwealth for clean-up.

While establishing strict, joint and several liability for spills of oil or hazardous materials, the new Act also allows liability to be apportioned: people will be held accountable for the portion of the Commonwealth's costs of cleaning up that reflects the portion of a release for which they are responsible.

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